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Before the
**FEDERAL COMMUNICATIONS COMMISSION**
Washington, D.C. 20554



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| In the Matter of | |
| Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992 | MM Docket No. 92-265 |
| Development of Competition and Diversity in Video Programming Distribution and Carriage | |

**REPLY OF DIRECTV, INC.**

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July 28, 1993

Before the
**FEDERAL COMMUNICATIONS COMMISSION**
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**REPLY OF DIRECTV, INC.**

DirecTv, Inc. ("DirecTv") hereby responds to the oppositions of Discovery Communications, Inc. ("Discovery"), Liberty Media Corporation ("Liberty Media"), Time Warner Entertainment Company, L.P. ("Time Warner"), United States Satellite Broadcasting Company, Inc. ("USSB"), and Viacom International, Inc. ("Viacom") to the petition for reconsideration filed by the National Rural Telecommunications Cooperative ("NRTC") in the above-referenced proceeding.

## I. Background

On June 10, 1993, NRTC requested the Commission, inter alia, to reconsider the scope of Section 76.1002(c)(1) of its new program access rules. Section 76.1002(c)(1) is the implementing regulation for Section 628(c)(2)(C) of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) (the "1992 Cable Act").

As NRTC pointed out in its petition for reconsideration, Section 628(c)(2)(C) of the statute contains a broad, per se ban on "practices, understandings, arrangements, and activities . . . that prevent a multichannel video programming distributor[1/] from obtaining any such programming

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1/ Multichannel video programming distributors ("MVPDs") are entities "engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming." In the Matter of Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage, First Report and Order, MM Docket No. 92-265 (released April 30, 1993), at 3, ¶ 6 n.3 ("Program Access Order").

from any satellite cable programming vendor in which a cable operator has an attributable interest" in areas that are unserved by cable operators.[2] Section 76.1002(c)(1) of the Commission's new rules, however, is drafted more narrowly than the statute to cover only exclusionary practices between "cable operators" and vertically integrated programmers. NRTC urged that the Commission not limit the scope of the statute in this manner, since by its terms the statutory provision plainly prohibits exclusionary practices and conduct beyond arrangements between vertically integrated programmers and cable operators.[3] NRTC offers a revision of Section 76.1002(c)(1) that would accomplish the broader purpose evident in the text of the statute.[4]

NRTC has been opposed by the usual cable interests that have consistently attempted to minimize or "gut" the program access protections of the 1992 Cable Act. USSB, a DBS MVPD that has acquired programming from vertically integrated programmers "with varying degrees of exclusivity to USSB vis-a-vis other DBS providers," has also opposed NRTC's petition.[5] DirecTv addresses the issues raised in opposition to NRTC's petition below.

## II. The Commission Should Confine Its Reconsideration Solely to the Scope of Section 628(c)(2)(c), and Avoid Broad Policy Pronouncements Concerning the Propriety of Exclusive Contracts Between Programming Vendors and Non-Cable MVPDs

NRTC has raised an important, but narrow, issue concerning the scope of Section 628(c)(2)(C), which pertains to exclusive contracting arrangements in areas unserved by cable

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2/ 47 U.S.C. § 628(c)(2)(C).

3/ As NRTC correctly observes:

> The phrase between the two commas in Section 628(c)(2)(C) (i.e., ",including exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable programming vendor or satellite broadcast programming vendor,") is only one example of the type of conduct that is prohibited. It is an illustrative example, not an all-inclusive prohibition within the statute. Clearly, Section 628(c)(2)(C) is not limited in scope solely to cable operators.

NRTC Petition for Reconsideration at 12-13.

4/ Id. at 15.

5/ USSB Opposition to Petition for Reconsideration of the National Rural Telecommunications Cooperative at 5.

operators. Viacom and USSB in particular have used NRTC's petition as an unwarranted springboard to make broad-based policy arguments that exclusive arrangements between vertically integrated programmers and MVPDs other than cable operators are "pro-competitive and promote program diversity"[6/] and "serve the public interest."[7/] In reconsidering the issue raised by NRTC concerning exclusive arrangements in unserved areas, the Commission should avoid any sweeping policy statements that lend credence to the Viacom arguments.

First, as a procedural matter, the broad issue of whether and the extent to which exclusive contracts with non-cable MVPDs are either in the public interest or even permitted under the Commission's new rules has not been properly raised, noticed or briefed in this proceeding. Although DirecTv believes that such exclusionary practices are contrary to the letter and spirit of the 1992 Cable Act, and evince a continuing strategy by cable interests to hobble alternative MVPD competitors, oppositions to a particular petition for reconsideration provide neither adequate notice nor record support for any broad determinations as to the competitive harm of exclusive contracts

vertically integrated programmers and non-cable MVPDs. The underlying purpose and the Commission's enforcement of these provisions could be greatly affected by unnecessary pronouncements here. The Commission should not fall into the cable "trap" with a premature pronouncement based on speculation.

## III. Section 628(c)(2)(C)'s Prohibition Against Exclusive Practices in Rural Areas is Broad in Scope

With respect to the specific issue that NRTC has raised, NRTC's reading of the Section 628(c)(2)(C) is correct. As a textual matter, the prohibition against exclusionary practices by vertically integrated programmers in unserved areas is unambiguous. It plainly "includes" but is not limited solely to arrangements between vertically integrated programmers and cable operators. The provision broadly prohibits without exception or qualification all "practices, understandings, arrangements, and activities" that prevent a MVPD from obtaining programming from a vertically integrated programmer.

Because the text of the statute is clear on this point, recourse to the legislative history of the 1992 Cable Act is unnecessary.[11/] Nevertheless, the legislative history also supports NRTC's straightforward reading of Section 628(c)(2)(C). The Conference Report expressly states: "The conferees intend that the Commission shall encourage arrangements which promote the development of new technologies providing facilities-based competition to cable and extending programming to areas not served by cable."[12/] Exclusive arrangements are contrary to this goal, and if pursued by vertically integrated cable programmers, could hamstring the development of one alternative MVPD at the expense of another, regardless of the distribution technology employed.

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11/ See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842 (1984) (where Congress has spoken directly to question at issue through plain language of statute, "that is the end of the matter")

12/ H.R. Rep. No. 102-862, House Comm. on Energy & Commerce, 102d Cong., 2d Sess. (1992) ("Conference Report"), at 93.

Moreover, contrary to the position of the cable interests,[13] the 1992 Cable Act was concerned with the anticompetitive activities and incentives of vertically integrated programmers independent of direct affiliations with or activity of cable operators, Thus, the Commission found:

> Although some parties claim that programming vendors would not have the incentive to engage in the prohibited practices where they are not vertically integrated, we believe that the legislative history demonstrates Congress' concern that vertically integrated vendors may control programming access in areas without a commonly owned distributor.[14]

Indeed, the Commission's 1990 Cable Report noted, for example, that "some [vertically integrated] programming services refuse to make their programming available to wireless cable providers, even in areas unserved by cable."[15] Such evidence not only supports the Commission's conclusion that vertically integrated vendors may control programming access in areas without a commonly owned distributor, but means that NRTC is correct in reading Section 628(c)(2)(C) to apply to exclusionary practices of vertically integrated programmers beyond arrangements with cable operators in unserved areas.

## IV. The Commission Must Not Facilitate the Cable Industry's Most Recent Effort to Limit Competition from Alternative MVPDs

Opposition to NRTC's petition for reconsideration is another example of the cable industry's continuing strategy to minimize competition from emerging MVPDs in general, and DBS providers in particular. In the event that the Commission does reach the merits of Viacom's broad arguments in particular, which DirecTv believes the Commission should not do (see Section II, supra), DirecTv requests the Commission to reject those arguments as contrary to the requirements of the 1992 Cable Act.

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13/ See, e.g., Liberty Media Opposition to the National Rural Telecommunications Cooperative's Petition for Reconsideration at 11.

14/ Program Access Order at 12, ¶ 30 (citing 138 Cong. Rec. H6533-34 (daily ed. July 23, 1992) (remarks of Rep. Tauzin).

15/ 1990 Cable Report, 5 FCC Rcd at 5021 (emphasis supplied).

The Viacom Opposition argues broadly that exclusive agreements with non-cable distributors are pro-competitive and promote program diversity, citing general federal and Commission precedent supporting exclusivity.[16/] After attempting to manufacture policy reasons as to why exclusive agreements will promote competition in the DBS industry, Viacom concludes by invoking and mis-using the now familiar litany that a blanket prohibition against exclusive agreements between vertically integrated programmers and non-cable distributors would be contrary to the principle that the antitrust laws were enacted for the "protection of competition, not competitors."[17/]

As Viacom's own opposition suggests, its position expressly violates the 1992 Cable Act.[18/] First, such exclusive arrangements violate Section 628(b)'s general prohibition of "unfair practices" which hinder significantly or prevent any MVPD from obtaining access to cable programming.[19/] In addition, Section 628(c)(2)(B) of the Act prohibits discrimination by a vertically integrated satellite cable programming vendor in the prices, terms and conditions of sale or delivery of satellite cable programming "among or between cable systems, cable operators, or other multichannel video programming distributors, or their agents or buying groups." The text of the Program Access Order makes it plain that non-price discrimination is covered by Section 628(c), including "unreasonable refusals to sell" and other exclusionary practices. Unreasonable refusals to

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16/ Viacom Opposition to Petition for Reconsideration at 11-12.

17/ Id. at 11-13.

18/ See id. at 8.

19/ The Commission has stated:

> Elements of an offense under this provision would, however, include a demonstration that "the purpose or effect" of the conduct was to "hinder significantly or prevent any multichannel video programming distributor from providing . . . programming to subscribers or consumers."

Program Access Order at 16, ¶ 41 (emphasis supplied). For example, if the purpose or effect of a vertically integrated programmer's exclusive arrangements with another DBS provider has resulted in the denial of crucial programming to DirecTv such that DirecTv is unable to offer the programming to its consumers, such an arrangement clearly violates the statute and Section 76.1001 of the Commission's rules.

sell include "refusing to sell programming to a class of distributors, or refusing to initiate discussions with a particular distributor when the vendor has sold its programming to that distributor's competitor."[20/] For vertically integrated programmers to make their programming available to one particular distributor on an exclusive basis, and then absolutely refuse to sell to a competing distributor, violates Section 628(c)(2)(B) of the 1992 Cable Act.

Viacom's reliance on general federal precedent supporting exclusivity is utterly misplaced. The Commission addressed this issue squarely in the Program Access Order in addressing the operation of Sections 628(c)(2)(C) and (D), reasoning:

> As a general matter, the public interest in exclusivity in the sale of entertainment programming is widely recognized. . . In the unique situation presented here, however, it is clear that exclusivity is not favored. Congress has clearly placed a higher value on new competitive entry than on the continuation of exclusive distribution practices that impeded that entry. In its 1990 Cable Report, the Commission itself articulated this balance as follows: "While we agree with the cable commenters that the Commission should and does generally support exclusivity rights, we believe that the public interest in developing competition to the local cable operator justifies temporary, limited and targeted intervention to ensure that alternative multichannel program providers have fair and reasonable access to programming."[21/]

With respect to Section 628(c)(2)(C) in particular, the Commission found:

> As for "other practices, understandings, arrangements and activities" that should come within the scope of our rules, we agree with those commenters who believe that any behavior that is tantamount to exclusivity should be prohibited in unserved areas. Any other interpretation would undermine the goals Congress sought to achieve by prohibiting exclusivity itself. Thus, our rules will prohibit vertically integrated programmers from engaging in activities that will result in de facto exclusivity, or from imposing requirements on MVPDs that prevent or restrict them from delivering their programming to any unserved area.[22/]

Prohibited exclusivity in the DBS industry is precisely the goal that Viacom appears to seek.

Of all of the emerging MVPD alternatives technologies, DBS has long been recognized as perhaps the most formidable nationwide potential medium capable of competing with

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[20/] Program Access Order at ¶ 116 (emphasis supplied). The Commission has stated that it will look to "certain antitrust precedents" and other legal principles to define what is "unreasonable." Id.

[21/] Program Access Order at ¶ 63 (emphasis supplied) (citation omitted).

[22/] Id. at ¶ 61 (emphasis supplied).

cable television.[23/] Moreover, the reality of the DBS industry is that, although a number of other applications to operate DBS satellites have been granted by the FCC, only DirecTv and USSB have the realistic possibility of providing non-cable owned operational high-power DBS service in the near future. Thus, for a significant period of time, the developing independent high-power DBS industry will consist of a universe of two licensees.

A regime such as the one proposed in the Viacom Opposition permits vertically integrated programmers to sell an incomplete set of different critical programming on an exclusive basis to each of USSB or DirecTv, thus potentially denying all operational entities in the high-power DBS industry access to the full menu of key programming they must have to attract subscribers. Such access is, of course, particularly vital to the early development and rollout of DBS businesses. Nevertheless, far from its purported desire to "raise the penetration level of its program services" to "alternative technology distributors,"[24/] Viacom's proposed structure further promulgates a cable strategy of "carving up" the DBS industry by imposing upon it a web of exclusive arrangements. Cable companies like Time Warner and Viacom would then face only "hobbled" DBS competitors, with consumers being forced to deal with multiple MVPDs, multiple billing systems and multiple customer service organizations to achieve the same complete package of programming services that would be offered to the consumers by a single cable operator.[25/]

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23/ See Competitive Impact Statement at 33948 (observing that because "of its small dish size and lower installation cost, high-power DBS is considered to be a potential competitive threat to cable"); House Report at 46 (citing RAND Study below and agreeing that "during the 1990's, high-powered DBS systems have greater potential for widespread competition with cable systems than do other multichannel video alternatives"); Leland Johnson and Deborah R. Castleman, Direct Broadcast Satellites: A Competitive Alternative to Cable Television, R-4047-MF/RL (Rand 1991), at 78 (concluding that widespread competition to cable is most likely to come from high-power DBS).

24/ Viacom Petition for Reconsideration and Clarification (June 10, 1993) at 7.

25/ It is important to note that Viacom has not yet agreed to offer directly to DirecTv a full complement of its premium services, including Showtime and the Movie Channel. As a defendant in the Primestar proceeding mentioned in USSB's opposition, see USSB Opposition to Petition for Reconsideration of the National Rural Telecommunications Cooperative at 6 n.6., Viacom was one MSO alleged to have helped formed Primestar, a medium-powered DBS entity,

Finally, Viacom's arguments that the Commission should favor exclusivity in the DBS context based upon USSB's limited transponder capacity should be rejected.[26/] Whether USSB has enough capacity ultimately to succeed in its business venture in competition with DirecTv, cable and alternative MVPDs is a matter subject to many business factors and will ultimately be for the marketplace and consumers to decide. What is certain, however, is that neither USSB nor DirecTv can succeed in becoming viable competitors to cable if they are completely denied access to the programming that Congress intended all alternative MVPDs to be able to obtain.

## V. CONCLUSION

Cable's frontal assault before both Congress and the FCC to gut the access to programming requirement failed. Their strategy now seems to be to find "loopholes" in the statute or in the Commission's regulatory scheme. The Commission should not allow this to happen. The Commission should grant NRTC's narrow request for reconsideration, and leave the broader issues for a concrete case.

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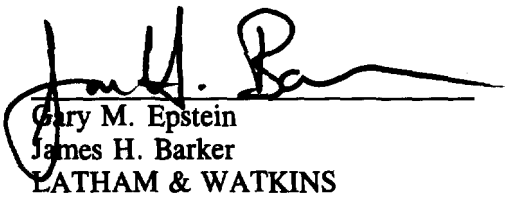
> with the specific purpose to delay, if not preempt, and to raise barriers to entry by other firms into direct broadcast satellite ("DBS"), a multichannel subscription television service. [The suit] also alleges that the defendants intended to restrain the availability of certain programming to other DBS entrants or possible entrants, as well as to facilitate coordinated retaliation by the MSO defendants to DBS entry by others.

Proposed Final Judgment and Competitive Impact Statement, United States v. Primestar Partners, L.P., et al., No. 93-Civ-3913, Competitive Impact Statement, 58 Fed. Reg. 33,944, 33,945, 33,948 (June 23, 1993). The Consent Judgment that Viacom and others have proposed in the Primestar proceeding in fact attempts to impose the same destructive regime of exclusive arrangements by vertically integrated programmers upon the DBS industry that the Viacom Opposition advocates here, and goes so far as to impose USSB's admittedly exclusive (and probably inflated relative to cable rates) deals entered into prior to the signing of the Consent Decree as the benchmark for "reasonable rates and terms" for the rest of the emerging DBS industry (but not other competitive MVPD industries). Further details of this anticompetitive scheme are described in the attached amicus brief filed by DirecTv, NRTC, Consumer Federation of America, and the Television Viewers of America in that proceeding.

26/ See Viacom Opposition to Petition for Reconsideration at 12.

Respectfully submitted,

By: 

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE STATE OF NEW YORK, et al.,

Plaintiff(s),

v.

PRIMESTAR PARTNERS L.P., et al.,

Defendants.



No. 93 Civ. 3868 (JES)

**JOINT AMICUS CURIAE MEMORANDUM OF LAW OF DirecTv, INC., NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE, CONSUMER FEDERATION OF AMERICA AND TELEVISION VIEWERS OF AMERICA, INC.**

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July 16, 1993

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United States v. Hooker Chemical and Plastics Corp.,

## I. PRELIMINARY STATEMENT

This case arises from the cable industry's monopolization of the multichannel video distribution market. By engaging in widespread unfair and discriminatory practices against emerging Multichannel Video Programming Distributors ("MVPDs")[1/] the cable

nation's ten largest cable system operators, also known as multiple system operators ("MSOs").

Some of these cable MSOs possess substantial ownership interests in the leading suppliers of video programming, such as HBO, Showtime, Cinemax and MTV. Both the States and the United States alleged, inter alia, that Primestar and its cable owners conspired to delay, hinder and preempt entry by other firms into the multichannel video distribution market by restricting access to the programming that certain of these defendants control. Thus, the States' Complaint alleges that the MSO defendants "monopolized, attempted to monopolize, combined and conspired to monopolize and restrained trade in the delivery of multichannel subscription television programming to consumers." Complaint at ¶ 1.[5/] The Complaint alleges that they designed and structured their DBS venture in order to reduce the potential for direct competition with the defendant MSOs' cable systems and undermine the ability of any cable competitive DBS service to develop."[6/]

Pursuant to an Order dated June 17, 1993, this Court granted amici curiae leave to object to the proposed consent judgments. DirecTv, Inc. ("DirecTv"),[7/] the

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5. The suit alleges that cable companies exercised their monopoly power to deny alternative MVPDs access to programming outright, or made it available only at discriminatory prices. Complaint at ¶¶ 40, 43-44, 50. The suit further alleges that the cable defendants formed the Primestar partnership, bought rights to a communications satellite, and set up a sham DBS system in an effort to "suppress and eliminate DBS competition in the delivery of multichannel subscription television programming," Complaint at ¶ 52.

6. Complaint at ¶ 58.

7. DirecTv will launch, in December of this year, the first high-powered U.S. DBS satellite, and shortly thereafter will introduce to American consumers the first truly competitive service to cable television. As a high-power DBS provider, DirecTv will provide approximately one hundred and fifty channels of high quality subscription and pay-per-view video programming to the public.

National Rural Telecommunications Cooperative ("NRTC")[8] the Consumer Federation of America ("CFA")[9] and the Television Viewers of America, Inc. ("TVA")[10] have joined in objecting to the proposed Decrees. All amici curiae herein have a direct interest in furthering both competition and consumer protection in the multichannel video distribution industry.

The Decrees should be rejected, or their approval conditioned on their modification, for two reasons. First, although the Decrees are a significant part of the government's efforts to structure the MVPD industry, they neither benefit consumers nor protect competition. The Decrees compromise the MSO defendants' purported obligations to provide fair, reasonable and nondiscriminatory access to programming with a host of exceptions that benefit and entrench the MSOs. The advantages thus conferred on the MSOs

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8. NRTC is a non-profit corporation, owned and controlled by 521 rural electric cooperatives and 231 rural telephone systems located throughout 49 sates. Through the use of satellite distribution technology, NRTC is committed to extending the benefits of information, education and entertainment programming to rural America on an affordable basis. On April 10, 1992, NRTC signed a DBS Distribution Agreement with HCG to provide DBS services to rural subscribers across the country. Under the DBS Distribution Agreement, HCG provides NRTC, its members and affiliated companies the satellite capacity and other necessary services to market and distribute 20 channels of popular cable programming services to rural households equipped with 18" DBS receiving antennas. Most of the programming services to be offered are owned or controlled by cable companies.

9. CFA is the nation's largest consumer advocacy group, composed of more than 240 state and local affiliates representing consumer, senior citizen, low-income, labor, farm, public power, and cooperative organizations, with more than 50 million individual members. CFA was the lead representative of the public in the legislative deliberations that led to the 1992 Cable Act. The millions of television viewers and cable consumers who constitute CFA's affiliates' members have a "paramount" First Amendment right to receive a variety of information from diverse sources, Red Lion Broadcasting v. FCC, 395 U.S. 367, 390 (1969), and have been undeniably harmed by the power that the cable industry has acquired and historically exercised to dominate the MVPD marketplace. CFA is therefore critically concerned with the anticompetitive and anti-consumer effects of the proposed Decrees on the public interest.

10. With members in 19 states and the District of Columbia, Television Viewers of America is a grassroots, non-profit, public interest consumer organization devoted, inter alia, to competition in multi-channel television delivery. Founded in 1991, TVA was active in the legislative struggle which resulted in the Cable Television Consumer Protection and Competition Act of 1992.

will make it very difficult for any MVPD to compete with them. Second, the Decrees

been addressed fairly and adequately by the proposed settlement, and whether competition may be adversely affected by the settlement. See, e.g., Dairylea Cooperative, 547 F. Supp. at 307-08; see also Montgomery County Real Estate Antitrust Litigation, 83 F.R.D. at 315.[13] If the interests of the public are not served by the terms of the settlement, the Court may exercise its discretion to reject or to approve the proposed decrees conditionally subject to certain modifications.[14]

## III. THE MVPD AND DBS INDUSTRIES, THE PROGRAM ACCESS PROVISIONS OF THE CABLE ACT AND AN OVERVIEW OF THE PROPOSED DECREES

### A. The MVPD And DBS Industries

MVPDs are entities "engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming."[15] Cable television operators, who transmit programming via wires directly to the home, have been the predominant type of MVPD. As Congress found in passing the Act:

> There has been a substantial increase in the penetration of cable television systems over the past decade. Nearly 56,000,000 households, over 69 percent of the households with televisions, subscribe to cable television, and this percentage is almost certain to increase. As a result of this growth, the cable

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13. The Court's public policy inquiry is particularly important where, as here, the interests affected by the proposed decrees "are far broader than those of the particular parties in a particular lawsuit." Patterson v. Newspaper and Mail Deliverors' Union, 384 F. Supp. 585, 588 (S.D.N.Y. 1974). In such cases, where significant public interests are at stake, the Court must "determine whether the decree adequately protects the public interest and is in accord with the dictates of Congress." United States v. Hooker Chemical and Plastics Corp., 607 F. Supp. 1052, 1057 (D.C.N.Y. 1985); see United States v. Ketchikan Pulp Co., 430 F. Supp. 83, 86 (D. Alaska 1977) (same, where "court is asked to enter a judgment which clearly will have an effect on the public").

14. See, e.g., Dairylea Cooperative, 547 F. Supp. at 307-08; see also United states v. GTE Corp., 603 F. Supp. 730, 753 (D.D.C. 1984); United States v. American Telephone and Telegraph Co., 552 F. Supp. 131, 216 (D.D.C. 1982); United States v. Associated Milk Producers, Inc., 394 F. Supp. 29, 40 (W.D. Mo. 1975).

15. Program Access Order at 3, ¶ 6 n.3.

> television industry has become a dominant nationwide medium.[16]

Similarly, the Complaint points out that cable has replaced over-the-air broadcasting as "the nation's major television distribution medium," and notes that "approximately 3,660,000 households subscribe to a cable service" in New York. Complaint at ¶ 33.

Congress has expressly sought to encourage competition to cable, particularly because cable service is typically provided by only one operator in each local community.[17] Congress was concerned by rising cable rates, poor customer service and the general implications for "the flow of news, information and entertainment to the American people" arising from cable's market power.[18] It recognized the public importance of encouraging emerging MVPD competitors to cable, because "[f]air competition in the delivery of television programming should foster the greatest possible choice of programming and should result in lower prices for consumers."[19] Thus, a principal purpose of the legislation was to promote MVPDs using "alternative and new technologies."[20] Such alternative distribution media include: Multichannel Multipoint Distribution Service ("MMDS" or "Wireless Cable"), Satellite Master Antenna Television systems ("SMATV"), Television Receive-Only

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16. The Act, § 2(a)(3).

17. See id. at (a)(2).

18. House Committee on Energy and Commerce, H.R. Rep. No. 102-268, 102d Cong., 2d Sess. (1992) ("House Report") at 26.

19. Act §2(a) H.R. Rep. No. 102-862, House Comm. on Energy & Commerce, 102d Cong., 2d Sess. (1992) ("Conference Report"), at 53; see Act, § 2(a)(6) ("There is a substantial governmental and First Amendment interest in promoting a diversity of views through multiple technology media."); § 2(b)(1) (stating that it is the policy of Congress to "promote the availability to the public of a diversity of views through cable television and other distribution media").

20. House Report at 27.

("TVRO") satellite programming services[21] and DBS.[22] These alternative distribution media are in their commercial infancy. Each has its distinct characteristics which offer consumers a choice, but as yet remain untested in the mass market. Without access to programming, however, none of the MVPD competitors to cable using these new media will emerge as a strong and robust challenger.

Of all of the emerging MVPD alternatives technologies, high-power DBS has long been recognized as perhaps the most formidable nationwide potential medium capable of competing with cable television.[23] High-power DBS service involves the provision of multichannel video programming service to "dinner plate"-size home dishes approximately eighteen inches in diameter, via satellites operating at high-power levels in the higher frequency direct broadcast portion of the Ku band.[24]

DirecTv and Hughes Communications Galaxy, Inc. ("HCG") are sister subsidiaries of Hughes Communications, Inc. ("HCI"). HCG has been licensed by the Federal Communications Commission ("FCC") to provide high-power DBS service.[25]

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21. Currently, using C-band technology, NRTC and its members provide various packages of satellite-delivered programming, called "Rural TV®," to more than 70,000 TVRO subscribers. C-band technology requires the use of six to twelve foot receiving antennas.

22. See Competitive Impact Statement at 33,948 for a description of these MVPD services; see also 1990 Cable Report, 5 FCC Rcd 4962, 5013 (1990).

23. See Competitive Impact Statement at 33948 (observing that because "of its small dish size and lower installation cost, high-power DBS is considered to be a potential competitive threat to cable"); House Report at 46 (citing RAND Study below and agreeing that "during the 1990's, high-powered DBS systems have greater potential for widespread competition with cable systems than do other multichannel video alternatives"); Leland Johnson and Deborah R.